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Administration of justice at the United Nations

Report of the Fifth Committee

Rapporteur: Mr. Hicham **Oussihamou** (Morocco)

I. Introduction

1. At its 3rd plenary meeting, on 21 September 2018, the General Assembly, on the recommendation of the General Committee, decided to include in the agenda of its seventy-third session the item entitled "Administration of justice at the United Nations" and to allocate it to the Fifth Committee.

2. The Fifth Committee considered the item at its 6th, 16th and 26th meetings, on 18 October, 16 November and 22 December 2018. Statements and observations made in the course of the Committee's consideration of the item are reflected in the relevant summary records.[1]

3. For its consideration of the item, the Committee had before it the following documents:

(a) Report of the Secretary-General on administration of justice at the United Nations (A/73/217 and A/73/217/Add.1);

(b) Report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/73/163);

(c) Report of the Internal Justice Council on administration of justice at the United Nations (A/73/218);

(d) Related report of the Advisory Committee on Administrative and Budgetary Questions (A/73/428);

(e) Letter dated 13 November 2018 from the President of the General Assembly addressed to the Chair of the Fifth Committee (A/C.5/73/11).

[1] A/C.5/73/SR.6, A/C.5/73/SR.16 and A/C.5/73/SR.26.

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II. Consideration of draft resolution A/C.5/73/L.10

4. At its 26th meeting, on 22 December, the Committee had before it a draft resolution entitled "Administration of justice at the United Nations" (A/C.5/73/L.10), submitted by the Chair of the Committee on the basis of informal consultations coordinated by the representative of Botswana.

5. At the same meeting, the Committee adopted draft resolution A/C.5/73/L.10 without a vote (see para. 6).

III. Recommendation of the Fifth Committee

6. The Fifth Committee recommends to the General Assembly the adoption of the following draft resolution:

Administration of justice at the United Nations

The General Assembly,

Recalling section XI of its resolution 55/258 of 14 June 2001 and its resolutions 57/307 of 15 April 2003, 59/266 of 23 December 2004, 59/283 of 13 April 2005, 61/261 of 4 April 2007, 62/228 of 22 December 2007, 63/253 of 24 December 2008, 64/233 of 22 December 2009, 65/251 of 24 December 2010, 66/237 of 24 December 2011, 67/241 of 24 December 2012, 68/254 of 27 December 2013, 69/203 of 18 December 2014, 70/112 of 14 December 2015, 71/266 of 23 December 2016 and 72/256 of 24 December 2107,

Having considered the reports of the Secretary-General on administration of justice at the United Nations[1] and on the activities of the Office of the United Nations Ombudsman and Mediation Services,[2] the report of the Internal Justice Council on administration of justice at the United Nations[3] and the related report of the Advisory Committee on Administrative and Budgetary Questions,[4] as well as the letter dated 13 November 2018 from the President of the General Assembly to the Chair of the Fifth Committee,[5]

1. *Takes note* of the reports of the Secretary-General on administration of justice at the United Nations[1] and on the activities of the Office of the United Nations Ombudsman and Mediation Services,[2] the report of the Internal Justice Council on administration of justice at the United Nations[3] and the related report of the Advisory Committee on Administrative and Budgetary Questions;[4]

2. *Endorses* the conclusions and recommendations contained in the report of the Advisory Committee, subject to the provisions of the present resolution;[4]

I
System of administration of justice

3. *Emphasizes* the importance of the principle of judicial independence in the system of administration of justice;

4. *Stresses* the importance of ensuring access for all staff members to the system of administration of justice, regardless of their duty station;

5. *Acknowledges* the evolving nature of the system of administration of justice and the need to carefully monitor its implementation to ensure that it remains within the parameters set out by the General Assembly;

6. *Reaffirms* its decision, contained in paragraph 4 of its resolution 61/261, to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to

[1] A/73/217 and Add.1.
[2] A/73/167.
[3] A/73/218.
[4] A/73/428.
[5] A/C.5/73/11.

ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike;

7. *Notes* that staff still appear to have limited awareness of the system of administration of justice, and urges the Secretary-General to further strengthen and increase its his outreach activities, with a view to raising awareness of the role and functioning of the various parts of the system and the possibilities it offers to address work-related complaints, paying particular attention to field missions and offices;

8. *Recalls* paragraph 27 of its resolution 71/266, further stresses the importance of continuing to implement a comprehensive outreach and communication strategy for all staff members covered under the formal and informal parts of the system of administration of justice, and in this regard invites the Secretary-General to take further measures, within existing resources, in line with paragraph 44 of the report of the Internal Justice Council, to address the need for improving staff knowledge and understanding of the system;

9. *Welcomes* the analysis of the root causes of conflict included in the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services, stresses the importance of improving management performance and staff communication, urges the Secretary-General to continue to address the systemic issues identified in the report in order to improve upon the policies and procedures of the Organization, and requests the Secretary-General to provide information on changes resulting from the actions taken in the context of his next report;

10. *Requests* the Secretary-General to continue to ensure a strong culture of accountability throughout the Secretariat and that all categories of personnel who may have been subjected to prohibited conduct in a work-related situation have access to effective remedies;[6]

11. *Notes* the new revised policy on protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations[7] and the ongoing efforts to annually review and assess the terms and implementation of the policy, and in this regard requests the Secretary-General to report in the context of the next report on the system of the administration of justice on how retaliation against staff members who lodge cases before the Tribunals or who appear as witnesses is being addressed;

II
Informal system

12. *Recognizes* that the informal system of administration of justice is an efficient and effective option both for staff who seek redress of grievances and for the participation of managers;

13. *Reaffirms* that the informal resolution of conflict is a crucial element of the system of administration of justice, emphasizes that all possible use should be made of the informal system in order to avoid unnecessary litigation, without prejudice to the basic right of staff members to access the formal system, and encourages recourse to the informal resolution of disputes;

14. *Welcomes with appreciation* the high resolution rate of cases mediated, encourages the Office of the Ombudsman and Mediation Services to continue its efforts in informal dispute resolution, and requests the Secretary-General to continue

[6] ST/SGB/2008/5.

[7] ST/SGB/2017/2/Rev.1.

to provide detailed information on the activities of the Office, including statistical overviews of mediated cases;

15. *Encourages* the Office of the United Nations Ombudsman and Mediation Services to intensify its outreach activities to encourage informal dispute resolution;

16. *Recalls* paragraph 37 of the report of the Advisory Committee, and requests the Secretary-General to establish, within existing resources, the pilot project to offer access to informal dispute-resolution services to non-staff personnel;

17. *Decides* that the pilot project will not affect the mandate of the United Nations Ombudsman and Mediation Services, and recognizes that the Ombudsman Office may decide to conduct outreach to non-staff;

18. *Requests* the Secretary-General to establish, in assessing its current and projected workload arising from services to non-staff personnel, both quantitative and qualitative analysis, including type of grievances and the efficiency of case-management, and requests the Secretary-General to provide this information and, if necessary, further recommendations in the context of his next report;

III
Formal system

19. *Recognizes* the ongoing positive contribution of the Office of Staff Legal Assistance to the system of administration of justice;

20. *Requests* the Secretary-General to continue to ensure the accountability of managers whose decisions have been established to be grossly negligent, according to the applicable Staff Regulations and Rules of the United Nations,[8] and which have led to litigation and subsequent financial loss, and to report thereon to the General Assembly at its seventy-fourth session;

21. *Notes with concern* the number of pending applications to the United Nations Dispute Tribunal;

22. *Recalls* paragraph 10 of the report of the Advisory Committee, notes the continuing variations in the number of cases received by different parts of the formal system from year to year, underscores the need for continued analysis of the trends in new cases received, and requests the Secretary-General to continue to collect statistics pertaining to the caseload of the different entities within the system and to include observations on these statistics in future reports;

23. *Requests* the Secretary-General to invite the Internal Justice Council to monitor and report on the timely delivery of judgments, in line with its terms of reference, and to provide its views on the implementation of the system of administration of justice;

24. *Recalls* paragraph 14 of the report of the Advisory Committee, requests the President of the United Nations Dispute Tribunal and the Principal Registrar of the Dispute Tribunal and the United Nations Appeals Tribunal to work together to develop and implement a case disposal plan with a real-time case-tracking dashboard and performance indicators on the disposal of caseloads, takes note of recommendations 7 to 11 contained in the report of the Internal Justice Council on judicial and operational efficiency, stresses the need to improve administrative efficiency, and requests the Secretary-General to report on progress made to the General Assembly at its seventy-fourth session;

[8] ST/SGB/2017/1 and ST/SGB/2017/1/Corr.1.

25. *Requests* the Secretary-General to continue to track the data on the number of cases received by the Management Evaluation Unit and the Dispute Tribunal in order to identify any emerging trends and to include his observations on those statistics in future reports;

26. *Notes* the continuing increase in the workload of the Office of Staff Legal Assistance, expresses its satisfaction that the majority of requests for legal assistance received by the Office were settled or otherwise disposed of without recourse to any formal mechanism, and acknowledges that the Office should be adequately resourced;

27. *Also notes* the continuing high degree of self-representation before the Dispute Tribunal, requests the Secretary-General to take forward, within existing resources, his proposals to provide guidance to self-represented applicants and to enhance their understanding and ability to utilize the system and mitigate efficiency concerns, and in this regard requests the Secretary-General to continue to monitor this issue and report thereon at its seventy-fourth session;

28. *Takes note* of paragraph 30 of the report of the Advisory Committee, decides to extend the voluntary supplemental funding mechanism for the Office of Staff Legal Assistance for a period of three years, from 1 January 2019 to 31 December 2021, and requests the Secretary-General to continue to provide updates in the context of future reports;

29. *Underscores* that any changes to the voluntary staff funding mechanism shall not affect the nature of the funding of the Office of Staff Legal Assistance;

30. *Notes* the continuing high opt-out rates from the voluntary staff funding mechanism, and in this regard encourages the Secretary-General to continue to strengthen incentives for staff not to opt out, particularly in locations and United Nations entities where the participation rate is low;

31. *Stresses* the need to continue to explore means to raise awareness among staff of the importance of financial contributions to the Office of Staff Legal Assistance, and requests the Secretary-General, in his capacity as Chair of United Nations System Chief Executives Board for Coordination, to encourage the executive heads of the United Nations system to communicate with their staff in this regard;

32. *Takes note* of paragraphs 20 and 21 of the report of the Advisory Committee, and approves the addition of four half-time judges in lieu of the three ad litem judges to the Dispute Tribunal, to be deployed as required by caseload and any absences affecting the work of the Tribunal;

33. *Decides* to amend article 4.1 of the statute of the Dispute Tribunal as follows:

"The Dispute Tribunal shall be composed of three full-time judges and six half-time judges";

34. *Also decides* to amend article 5 of the statute of the Dispute Tribunal as follows:

"1. The three full-time judges of the Dispute Tribunal shall exercise their functions in New York, Geneva and Nairobi, respectively.

"2. The half-time judges of the Dispute Tribunal shall be deployed up to a cumulative period of six months per year, as decided by the President based on the caseload and any judicial absences affecting the work of the Tribunal.

"3. The Dispute Tribunal may decide to hold sessions at duty stations other than New York, Geneva and Nairobi, as required by its caseload."

35. *Encourages* the Dispute Tribunal to make full use of telecommuting in the deployment of half-time judges so as to promote efficiencies in the use of resources, and requests the President of the Tribunal, following consultations with the Principal Registrar, to decide on a quarterly basis whether and where to deploy half-time judges;

36. *Underscores* that the half-time judges may not be deployed in a particular year or may be deployed less than a cumulative period of six months a year if their deployment is not justified by the Dispute Tribunal's caseload;

37. *Decides* to extend the positions of the two ad litem judges in Geneva and Nairobi and the current incumbent judges, pending the nomination of candidates by the Internal Justice Council and the appointment of the aforementioned four half-time judges by the General Assembly, which should take place no later than 31 December 2019;

38. *Also decides* not to extend the ad litem judge position in New York which expires on 31 December 2018;

39. *Takes note* of paragraph 26 of the report of the Advisory Committee, and invites the Internal Justice Council to provide more detailed information regarding the unexpected judicial vacancies, including information on the scope of a formal roster of candidates to the General Assembly in the context of its next report;

40. *Approves* the proposal of the Secretary-General to amend article 7 of the rules of procedure of the Appeals Tribunal as contained in paragraph 120 (g) of his report on administration of justice;

IV
Other issues

41. *Invites* the Sixth Committee to consider the legal aspects of the report to be submitted by the Secretary-General, without prejudice to the role of the Fifth Committee as the Main Committee entrusted with responsibilities for administrative and budgetary matters;

42. *Welcomes* further views of the Internal Justice Council in its next report to the General Assembly on possible ways to improve judicial and operational efficiency;

43. *Stresses* that the Internal Justice Council can help to ensure independence, professionalism and accountability in the system of administration of justice, and requests the Secretary-General to entrust the Council to include the views of both the Dispute Tribunal and the Appeals Tribunal in its reports;

44. *Also stresses* that all elements of the system of administration of justice, including the Disputes Tribunal and the Appeals Tribunal, must work in accordance with the Charter of the United Nations and the legal and regulatory framework approved by the General Assembly, and emphasizes that the decisions of the Assembly related to human resources management and administrative and budgetary matters are subject to review by the Assembly alone;

45. *Reaffirms* that, in accordance with paragraph 5 of its resolution 67/241 and paragraph 28 of its resolution 63/253, the Dispute Tribunal and the Appeals Tribunal shall not have any powers beyond those conferred under their respective statutes;

46. *Requests* the Secretary-General to prepare, from within existing resources, and with a view to informing the discussions at the seventy-fourth session of the General Assembly, a comprehensive analysis, in the context of his next report, of the remedies available to non-staff personnel, including their effectiveness, efforts that

could be made to prevent disputes and to resolve existing disputes *inter partes* and the identification of good practices, drawing on information and proposals contained in his reports submitted to the Assembly at its sixty-sixth,[9] sixty-seventh,[10] seventy-second[11] and seventy-third sessions;[12]

47. *Also requests* the Secretary General to provide, to the seventy-fifth session of the General Assembly, an in-depth assessment, from within existing resources, on the impact of the new measures introduced in the present resolution.

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[9] A/66/275 and A/66/275/Corr.1, annex II.

[10] A/67/265 and A/67/265/Corr.1, annexes IV, V and VI.

[11] A/72/204, annex II.

[12] A/73/217, paras. 96–105.